

## Remarks

Applicant greatly appreciates the personal interview with Examiner Yu on 9 November 2004, and based on the discussions during the interview, respectfully requests reconsideration and withdrawal of the restriction requirements in the October 6, 2004 office action, in view of the above amended claims .

Accordingly, in the amended claims independent methods have been narrowed to incorporate the use of an EpCAM antibody (see page 59, line 1-16) as the initial capture agent in assessing malignancy, with subsequent dependent claims reciting related species. These species (shown in Table XII) are diathesis associated molecules that are used as therapeutic targets. They share a common function in that they provide a characteristic profile of the captured cancer cells expressing EpCAM antigens.

Further, the amended independent methods for determining alterations in tumor diathesis molecules are focused on only those cancer cells recognizing an EpCAM antibody as the capture antibody. Methods drawn to a "whole body biopsy" or drawn to the identification of changes to cells within a tumor mass are now based upon those cells obtained with EpCAM antibody as the capture antibody. "Whole body biopsy" refers to the complete assessment of a patient which would include assessing an appropriate dosage regimen and monitoring therapy (page 12, line1-4). Similarly, the kit claims are now limited to include a coated magnetic particle linked to an EpCAM antibody.

Applicant wishes to thank the Examiner for proposing a more focused inventive concept, such that now the molecules listed in Table XII and Claim 79, when incorporated into the amended claims, share a common function and mode of operation by providing a more complete profile in the identification of EpCAM-positive captured cells. With the above amendments, applicant has restructured the claims to define the invention more particularly and distinctly so as to overcome the rejections as set forth in the restriction requirement. Accordingly, applicant respectfully requests reconsideration of the subject application and withdrawal of the restriction requirement with these newly amended claims.

Alternatively, however, if the Examiner determines that the restriction requirement should be maintained, in order to be fully responsive to the outstanding office action, Applicant hereby elects claims incorporating Her-2, EGFR and PSA (preferably EGFR) as tumor diathesis associated molecules in assessing cancer risk to prosecute in the instant application, without prejudice to Applicant's right to present any of the remaining non-elected claims in one or more divisional applications.

Yours Very Respectfully,

  
Joseph F. Aceto  
PTO Registration No. 50701

Telephone: (215) 830-0777 ext 237  
Facsimile: (215) 914-1117